

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Vonnie Darin Darby,)	
)	
Petitioner,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	Case No. 1:10-cv-056
Robyn Schmalenberger, Warden, North)	
Dakota State Penitentiary,)	
)	
Respondent.)	

The petitioner, Vonnie Darin Darby, is an inmate in the North Dakota State Penitentiary. A North Dakota district court's order denying Darby's application for post-conviction relief and petition for habeas corpus relief is currently on appeal before the North Dakota Supreme Court. On July 12, 2010, Darby filed an "Application to Proceed In Forma Pauperis," a petition under 28 U.S.C. § 2254 for a writ of habeas corpus, and a "Petition for 3-Judge Panel" with this court. See Docket Nos. 1, 2, and 3. On July 26, 2010, Magistrate Judge Charles S. Miller, Jr. granted Darby's "Application to Proceed In Forma Pauperis." See Docket No. 7. On July 28, 2010, the Court denied Darby's "Petition for 3-Judge Panel." See Docket No. 8. On September 14, 2010, Magistrate Judge Miller issued a Report and Recommendation in which he recommended Darby's petition for a writ of habeas corpus be denied, that the Court certify that an appeal from the denial of his petition may not be taken in forma pauperis, and that a certificate of appealability not be issued. See Docket No. 10. The parties were given fourteen (14) days in which to file objections. Darby filed an objection on September 28, 2010. See Docket No. 11.

In his objection, Darby contends Judge Miller erred by recommending this Court deny his petition. Among other arguments, Darby contends he is entitled to bail while his state appeal is pending under both the United States and North Dakota Constitutions. Darby concludes his

objection by stating, “Because the above, in addition to Darby’s PP and the state record show’s that he is in fact entitled to habeas relief, and that Miller’s dismissal recommendation is not only irrational, misplaced & unfounded, but unjust and an mockery of that which the Great Writ stands for, his report shall be denied, so that justice can be best served.” See Docket No. 11 (errors in original).

The Court has carefully reviewed the Report and Recommendation, relevant case law, Darby’s objection, and the entire record, and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 10) in its entirety and **DENIES** Darby’s petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus (Docket No. 2). The Court certifies that an appeal from the denial of this action may not be taken in forma pauperis because such an appeal would be frivolous and cannot be taken in good faith, and **ORDERS** that a certificate of appealability not be issued.

IT IS SO ORDERED.

Dated this 8th day of October, 2010.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court